BELLSOUTH

BellSouth Telecommunications, Inc.
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Patrick W. Turner
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June 18, 2004

The Honorable Bruce Duke
Executive Director
Public Service Commission of SC
Post Office Drawer 11649
Columbia, South Carolina 29211

Re: Analysis of Continued Availability of Unbundled Local Switching for Mass Market Customers Pursuant to the Federal Communication Commission's Triennial Review Order
(Docket No. 2003-326-C)

Continued Availability of Unbundled High Capacity Loops at Certain Locations and Unbundled High Capacity Transport on Certain Routes Pursuant to the Federal Communication Commission's Triennial
Review Order
(Docket No. 2003-327-C)

Dear Mr. Duke:

Enclosed for filing are the original and ten copies of BellSouth Telecommunications, Inc.'s Update to BellSouth Telecommunications, Inc.'s Response in Opposition to the Petition of CompSouth for Emergency Declaratory Ruling in the above-referenced matters.

By copy of this letter, I am serving this update on all parties of record as reflected by the attached Certificate of Service.

Sincerely,

Patrick W. Turner

PWT/nml
Enclosures
cc: All Parties of Record
PC Docs # 541765

BEFORE

THE PUBLIC SERVICE COMMISSION OF

SOUTH CAROLINA

DOCKET NOS. 2003-326-C AND 2003-327-C

IN RE:

Analysis of Continued Availability of Unbundled Local Switching for Mass Market Customers Pursuant to the Federal Communication Commission's Triennial Review Order (Docket No. 2003-326-C)	)
And	)
Continued Availability of Unbundled High Capacity Loops at Certain Locations and Unbundled High Capacity Transport on Certain Routes Pursuant to the Federal Communication Commission's Triennial Review Order (Docket No. 2003-327-C)	)

UPDATE TO
BELLSOUTH TELECOMMUNICATIONS, INC.'S RESPONSE IN OPPOSITION
TO THE PETITION OF COMPSOUTH FOR EMERGENCY DECLARATORY RULING

On June 4, 2004, BellSouth Telecommunications, Inc. ("BellSouth") filed its Response in opposition to the Petition for Emergency Declaratory Ruling ("Petition") filed by the Competitive Carriers of the South, Inc. ("CompSouth") on or about May 27, 2004. BellSouth respectfully submits this pleading to update the Public Service Commission of South Carolina ("Commission") on relevant developments since BellSouth filed its Response. Each of these developments support BellSouth's request, set forth in its Response, that the Commission dismiss the Petition and continue to hold these dockets open in order to allow the Commission to resolve issues related to an orderly transition given that the D.C. Circuit's mandate has taken effect.

I. THE DC CIRCUIT HAS ISSUED ITS MANDATE, AND BELLSOUTH HAS REITERATED ITS COMMITMENT TO CONTINUE HONORING ITS EXISTING INTERCONNECTION AGREEMENTS UNTIL THOSE AGREEMENTS HAVE BEEN CONFORMED TO BE CONSISTENT WITH THE COURT'S MANDATE.

On June 16, 2004, the United States Court of Appeals for the District of Columbia Circuit ("Court") issued a mandate that effectuates the decision released by the Court on March 2, 2004. By virtue of this mandate, as of June 16, 2004, certain unbundling rules adopted by the Federal Communications Commission (FCC) in its Triennial Review Order (TRO) on October 2, 2003, were vacated. Specifically, the Court vacated the FCC's rules associated with the unbundling of mass-market switching, high capacity dedicated transport, dark fiber and high capacity loops, thereby eliminating BellSouth's obligation, pursuant to Section 251 of the 1996 Telecommunications Act, to unbundle these elements at Total Element Long-Run Incremental Cost (TELRIC) rates.

In written correspondence to the industry, to the FCC, and to our state public service commissions, BellSouth has reiterated its commitment to continue honoring its existing interconnection agreements until those agreements have been conformed to be consistent with the Court's mandate. To that end, BellSouth has committed that it will not, prior to January 1, 2005, unilaterally[1] increase the prices it charges for mass market switching, high-capacity dedicated transport, dark fiber or high capacity loops for those carriers with current interconnection agreements. If a carrier with an existing interconnection agreement does not enter into an alternative arrangement to obtain such elements from BellSouth, BellSouth will

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[1] This commitment does not prevent BellSouth from increasing rates as a result of the issuance of a pending cost order by a state Commission or from entering into new interconnection agreements with new entrants or with CLECs whose existing agreements have expired wherein the new agreement does not include the vacated elements, and it does not prevent BellSouth and another carrier from mutually agreeing to increased rates in 2004.

continue to honor the terms of the carrier's existing interconnection agreement until such time as established legal processes relieve BellSouth of that obligation. BellSouth has also stated that it will continue negotiating commercial agreements for its DS0 Wholesale Local Voice Platform Service, and such commercial agreements, unless otherwise agreed to by the parties, will include no rate increase for 2004. BellSouth will also continue to offer a plan to transition high capacity dedicated transport, dark fiber and high capacity loops from UNE rates to access tariff rates – again, with no rate increase for 2004. FCC Chairman Powell has announced that the FCC is working expeditiously to issue new rules that comply with the Court's mandate, and such rules are expected by the end of this year.

In the meantime, BellSouth intends to implement the Court's mandate via "change of law" provisions in each competitive local exchange carrier's (CLEC) interconnection agreement. BellSouth will follow the applicable notice provisions set forth in those agreements and will provide, where appropriate, each CLEC with written notice requesting that the CLEC enter into an amendment to its interconnection agreement. This amendment will reflect the Court's mandate by eliminating language from the interconnection agreement concerning those network elements provided under the FCC rules that have now been vacated. This exercise is purely ministerial and should not require extensive negotiation. Any disputes that arise between the parties will be brought to this Commission for resolution, unless the terms of the approved interconnection agreement provide for an alternate method of dispute resolution.

In short, BellSouth is committed to an orderly transition to effectuate the Court's mandate. Notwithstanding rhetoric from certain CLECs to the contrary, this orderly transition should not result in any consumer paying higher prices for telephone service, and CLECs will

continue to be able to purchase products and services from BellSouth to serve their end user customers.

II. SEVERAL STATE COMMISSIONS IN BELLSOUTH'S REGION HAVE AGREED THAT THERE IS NO EMERGENCY.

The state commissions of Tennessee, North Carolina and Louisiana agree that there is no "emergency", as the Tennessee Regulatory Authority voted to dismiss an analogous docket filed by XO Tennessee, Inc. on June 7, 2004. In addressing a complaint filed by CompSouth in Louisiana, that Commission decided on June 9, 2004 that expedited relief was not needed, and it held CompSouth's Complaint in abeyance. On June 11, 2004, the North Carolina Utilities Commission entered an order denying emergency relief. *See* Attachment A. As a result of letters BellSouth filed in Mississippi and Kentucky, *see* Attachments B and C, the parties to those proceedings jointly agreed that those Commissions should hold CompSouth's Petition (and BellSouth's Answer) in abeyance and keep their respective dockets open until such time as the parties requested the Commission to take further action. In light of the foregoing, it should be abundantly clear that there is certainly no "emergency" in South Carolina.[2]

III. COMPSOUTH'S REQUEST FOR AN ORDER REQUIRING BELLSOUTH TO UTILIZE THE CHANGE OF LAW PROVISIONS IS MOOT.

CompSouth has asked the Commission to declare that interconnection agreements must be changed to conform to the D.C. Circuit Court's ruling through the "change of law" process contained in the individual interconnection agreements. This aspect of CompSouth's request is moot because, as explained above, BellSouth intends to utilize the change of law process in

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[2] To the contrary, as explained in Attachment D (a copy of an editorial that appeared in the Wall Street Journal on June 9, 2004), the fact that the Court's mandate is now in effect is a positive and long-overdue step in the right direction.

existing interconnection agreements. Nonetheless, the Commission should be mindful that this process may result in issues that will need to be resolved on an industry-wide basis.

CONCLUSION

For the reasons set forth above, BellSouth respectfully requests that the Commission dismiss the Petition and continue to hold these dockets open in order to allow the Commission to resolve issues related to an orderly transition given that the D.C. Circuit's mandate has taken effect.

Respectfully submitted, this 18th day of June, 2004.

BELLSOUTH TELECOMMUNICATIONS, INC.

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541792

ATTACHMENT A

STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH

DOCKET NO. P-100, SUB 133t

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Request of the Competitive Carriers of the South, Inc., for an Emergency Declaratory Ruling	)))	ORDER DENYING EMERGENCY RELIEF

BY THE COMMISSION: On May 27, 2004, Competitive Carriers of the South, Inc. (CompSouth)[1] filed a petition for an emergency declaratory ruling "that the obligations of parties to interconnection agreements filed with the Commission remain in effect unless and until those interconnection agreements are amended, filed with and approved by the Commission." CompSouth requested an expedited ruling because the mandate in *U.S. Telecom Ass'n v. FCC*, 359 F.3d 554 (D.C. Cir. 2004) (*USTA II*) will issue on June 15, 2004, and, for various reasons set forth in its petition, CompSouth is concerned that once the mandate issues, BellSouth Telecommunications, Inc. (BellSouth) may refuse to honor interconnection agreements with Competing Local Providers (CLPs). *USTA II* vacates certain portions of the Federal Communications Commission's (FCC's) *Triennial Review Order* (TRO).

While the first paragraph of CompSouth's petition appears to seek a general determination of the rights and obligations of "parties to interconnection agreements," the remainder of the petition deals exclusively with facts specific to BellSouth. In light of this ambiguity and the potential precedential ramifications a declaratory ruling could have, the Commission provided all interested Incumbent Local Exchange Carriers (ILECs) and the Public Staff an opportunity to file comments regarding CompSouth's petition. By Order dated May 28, 2004, the Commission ordered all such comments to be filed by June 4, 2004. BellSouth, Carolina Telephone and Telegraph Company, Central Telephone Company and Sprint Communications Company L.P. (collectively Sprint), Verizon South, Inc. (Verizon) and the Public Staff each filed comments in response to the Commission's Order.

Having reviewed and considered CompSouth's petition and all comments filed, the Commission finds that no cause exists at this time to issue a declaratory ruling of the rights and obligations of the parties, i.e., BellSouth and CLPs, under existing, Commission-approved interconnection agreements. BellSouth has given assurance, through a May 24, 2004 Carrier Letter Notification, a May 28, 2004 letter filed with the

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[1] The members of CompSouth include: Access Integrated Networks, Inc., Access Point Inc., AT&T, Birch Telecom, Covad Communications Company, IDS Telecom LLC, ITC^DeltaCom, KMC Telecom, LecStar Telecom, Inc., MCI, Momentum Business Solutions, Network Telephone Corp., NewSouth Communications Corp., NuVox Communications Inc., Talk America Inc., Xspedius Communications, and Z-Tel Communications. DSLnet Communications LLC also joined in the CompSouth petition.

Commission in Docket Nos. P-100, Sub 133q and Sub 133s, and a May 26, 2004 conference call convened in the same dockets by Commission Order dated May 21, 2004, that if the *USTA II* mandate issues on June 15, (1) it will not unilaterally disconnect or change rates for service being provided to a CLP under an existing interconnection agreement; (2) it will seek to effectuate changes that become permissible as a result of *USTA II* "via established legal procedures;" and, (3) it "will continue to accept and process new orders for services (including switching, high capacity transports, and high capacity loops) and will bill for those services in accordance with the terms of existing interconnection agreements, until such time as those agreements have been amended, reformed or modified consistent with the D. C. Circuit's decision pursuant to established legal processes." In addition, in its comments filed in this docket, BellSouth states that it "has repeatedly assured the industry that it will not act unilaterally with regard to its Interconnection Agreements once the vacatur [of TRO by *USTA II*] becomes effective." These assurances suggest that the requested emergency relief is not required by the vacatur of portions of the FCC's TRO becoming effective on June 15, 2004.

The Commission believes that BellSouth's acts of assurance are good faith attempts to allay fears that it would take unilateral actions contrary to its obligations under existing interconnection agreements with CLPs. While the Commission recognizes BellSouth's statement in its May 28th letter that "as it is legally entitled to do, BellSouth reserves all rights, arguments, and remedies it has under the law with respect to rates, terms, and conditions in the agreements" and its statement in the May 24th Carrier Notification Letter that it intends to pursue amendment, reformation or modification of existing interconnection agreements consistent with the *USTA II* Court's mandate, the Commission does not believe these statements necessitate granting emergency relief. In its filed comments, BellSouth states that it may be relieved of its contractual obligations "through the 'change of law' provisions in the Interconnection Agreements themselves, by a generic proceeding held by the appropriate state or federal agencies, or by a proceeding filed in the appropriate court." This explanation by BellSouth of the processes it would use to seek relief from its existing contractual obligations suggests to the Commission that CompSouth and other CLPs face no imminent threat with respect to their rights under interconnection agreements with BellSouth.

Accordingly, the Commission finds no cause to grant emergency declaratory relief at this time and, to the extent the CompSouth petition seeks an emergency ruling, the petition is denied. However, and in accordance with the comments of both BellSouth and the Public Staff, the Commission finds it appropriate to hold this docket open pending further order as it is anticipated that CompSouth and CLPs generally will continue to have concerns relating to their rights and the availability of unbundled network elements should the *USTA II* mandate take effect on June 15, 2004 or any time thereafter. Moreover, it is also possible that circumstances may change and warrant further consideration of the issues raised by the CompSouth petition at a later time—a particular possibility given that *USTA II* may still be heard on appeal to the United States Supreme Court. Finally, the Commission reminds all interested parties of its keen

interest in this matter and its desire that legitimate disputes between the parties be resolved in an orderly fashion that will not result in the sudden, unexpected interruption of telecommunication service to the citizens of North Carolina.

IT IS, THEREFORE, SO ORDERED.

ISSUED BY ORDER OF THE COMMISSION.

This the 11th day of June, 2004.

NORTH CAROLINA UTILITES COMMISSION

Gail L. Mount

Gail L. Mount, Deputy Clerk

tb060904.01

ATTACHMENT B

BellSouth Telecommunications, Inc.
175 East Capitol Street, Suite 790
Post Office Box 811
Jackson, MS 39205

Thomas B. Alexander
General Counsel-Mississippi

601 961 1700
Fax 601 961 2397

June 11, 2004

HAND-DELIVERED

FILED

JUN 1 1 2004

MISS. PUBLIC SERVICE COMMISSION

Mr. Brian U. Ray
Executive Secretary
Mississippi Public Service Commission
2nd Floor, Woolfolk Building
Jackson, Mississippi 39201

Re: MPSC Docket No. 2004-AD-0366; CompSouth's Complaint for an Emergency Relief and Motion for Cease and Desist Order against BellSouth

Dear Brian:

At the Special Hearing held yesterday, June 10, 2004, by the Mississippi Public Service Commission ("Commission") on Competitive Carriers of the South, Inc.'s ("CompSouth") Motion for Emergency Temporary Cease and Desist Order ("Motion"), CompSouth moved to withdraw its Motion and BellSouth Telecommunications, Inc. ("BellSouth") agreed to submit a letter similar to the letter that was read into the record before the Louisiana Public Service Commission the day before. CompSouth and BellSouth also jointly agreed that the Commission should hold CompSouth's Complaint (and BellSouth's Answer) in abeyance and keep this docket open until such time as the parties requested the Commission to take further action. These requests were agreed to by the Commission at the Hearing on yesterday. Accordingly, BellSouth submits the following letter.

On May 27, 2004, CompSouth filed a Complaint for Emergency Relief which included a Motion for Temporary Cease and Desist Order, both of which requested expedited action from this Commission based upon CompSouth's perception of an imminent service disruption. BellSouth filed its Response to the Motion on June 7, 2004 and BellSouth filed its Answer to the Complaint on June 9, 2004.

On May 24, 2004, BellSouth posted a Carrier Notification Letter to set forth BellSouth's position concerning the D.C. Circuit Court of Appeals' decision that vacated portions of the Federal Communications Commission's *Triennial Review* Order. A copy of this Carrier Notification Letter is attached hereto. BellSouth intended to alleviate apparent uncertainty on the part of some carriers. Apparently, some carriers remain confused. This letter is intended to alleviate any such confusion. As provided in

BellSouth's May 24, 2004 Carrier Letter Notification, BellSouth will not "unilaterally disconnect services being provided to any CLEC under the CLEC's Interconnection Agreement." Consequently, there will be no chaos as CompSouth alleges. BellSouth will not unilaterally change its interconnection agreements; rather, it will effectuate changes to its interconnection agreements via established legal procedures.

With respect to new or future orders, "BellSouth will not unilaterally breach its interconnection agreements." If the D.C. Circuit issues its mandate on June 15, 2004, BellSouth will continue to accept and process new orders submitted pursuant to existing interconnection agreements including those orders for unbundled network elements (UNEs), combinations, and services (including unbundled switching, unbundled high capacity transport, and unbundled high capacity loops) and will bill for those services in accordance with the rates, terms and conditions of existing interconnection agreements, until such time as those agreements have been amended, reformed, or modified consistent with the D.C. Circuit's decision pursuant to established legal processes. As it is legally entitled to do, BellSouth reserves all rights, arguments, and remedies it has under the law with respect to the rates, terms, and conditions in the agreements.

I trust this information adequately addresses CompSouth's concerns relating to service disruption and demonstrates that expedited action by this Commission is completely unnecessary. If I can be of further assistance, please let me know.

Sincerely,

Tom Alexander

Thomas B. Alexander

TBA/kws

Attachment

cc: Chairman, Bo Robinson (w/attachment)
Vice Chairman, Nielsen Cochran (w/attachment)
Commissioner, Michael Callahan (w/attachment)
Robert G. Waites, Esq. (w/attachment)
George M. Fleming, Esq. (w/attachment)
David L. Campbell, Esq. (w/attachment)
Allison Fry, Esq. (w/attachment)
James L. Halford, Esq. (w/attachment)
Robert P. Wise, Esq. (w/attachment)

540939

BELLSOUTH

BellSouth Interconnection Services
675 West Peachtree Street
Atlanta, Georgia 30375

Carrier Notification
SN91084106

Date: May 24, 2004

To: Facility-Based Competitive Local Exchange Carriers (CLEC)

Subject: Facility-Based CLECs – (Business/Operations Process) - Provision of Service to CLECs Post-Vacatur

The District of Columbia Circuit Court of Appeals' March 2, 2004, Opinion vacating certain Federal Communications Commission (FCC) Unbundled Network Element (UNE) rules is scheduled to become effective on June 16, 2004. This letter is to affirm that BellSouth will not unilaterally breach its interconnection agreements. Upon vacatur of the rules, BellSouth does intend to pursue modification, reformation or amendment of existing Interconnection Agreements (with the exception of new commercial and transition agreements) to properly reflect the Court's mandate. Rumors have been circulating that, upon vacatur, services that BellSouth now provides to CLECs under their Interconnection Agreements will be disconnected. Contrary to such rumors, if the rules are vacated, BellSouth will not, as a result of the vacatur, unilaterally disconnect services being provided to any CLEC under the CLEC's Interconnection Agreement.

If you have any questions, please contact your BellSouth contract manager.

Sincerely,

ORIGINAL SIGNED BY KRISTEN ROWE FOR JERRY HENDRIX

Jerry Hendrix – Assistant Vice President
BellSouth Interconnection Services

ATTACHMENT C

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Dorothy.Chambers@BellSouth.com

Dorothy J. Chambers
General Counsel/Kentucky

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June 14, 2004

Ms. Beth O'Donnell
Executive Director
Kentucky Public Service Commission
P.O. Box 615
211 Sower Boulevard
Frankfort, KY 40602

Re: Petition of CompSouth for Emergency Declaratory Ruling
PSC 2004-00204

Dear Ms. O'Donnell:

On June 10, 2004, a teleconference meeting was held by the Kentucky Public Service Commission ("Commission") on Competitive Carriers of the South, Inc.'s ("CompSouth") Petition for Emergency Declaratory Ruling ("Petition"). CompSouth agreed to withdraw its Petition and BellSouth Telecommunications, Inc. ("BellSouth") agreed to submit a letter similar to the letter that was read into the record before the Louisiana Public Service Commission on June 9, 2004. CompSouth and BellSouth also jointly agreed that the Commission should hold CompSouth's Petition (and BellSouth's Answer) in abeyance and keep this docket open until such time as the parties requested the Commission to take further action. These requests were agreed to by the Commission during the June 10 teleconference meeting. Accordingly, BellSouth submits the following letter.

On May 27, 2004, CompSouth filed a Petition for an Emergency Declaration Ruling which requested expedited action from this Commission based upon CompSouth's perception of an imminent service disruption. BellSouth filed its Response (a letter and a pleading) on June 8, 2004.

On May 24, 2004, BellSouth posted a Carrier Notification Letter to set forth BellSouth's position concerning the D.C. Circuit Court of Appeals' decision that vacated portions of the Federal Communications Commission's *Triennial Review* Order. A copy of this Carrier Notification Letter is attached hereto. BellSouth intended to alleviate apparent uncertainty on the part of some carriers. Apparently, some carriers remain confused. This letter is intended to alleviate any such confusion. As provided in BellSouth's May 24, 2004, Carrier Letter Notification, BellSouth will not "unilaterally disconnect services being provided to any CLEC

under the CLEC's Interconnection Agreement." Consequently, there will be no chaos as CompSouth alleges. BellSouth will not unilaterally change its interconnection agreements; rather, it will effectuate changes to its interconnection agreements via established legal procedures.

With regard to new or future orders, "BellSouth will not unilaterally breach its interconnection agreements." If the D.C. Circuit issues its mandate on June 15, 2004, BellSouth will continue to accept and process new orders submitted pursuant to existing interconnection agreements including those orders for unbundled network elements (UNEs), combinations, and services (including unbundled switching, unbundled high capacity transport, and unbundled high capacity loops) and will bill for those services in accordance with the rates, terms and conditions of existing interconnection agreements, until such time as those agreements have been amended, reformed, or modified consistent with the D.C. Circuit's decision pursuant to established legal processes. As it is legally entitled to do, BellSouth reserves all rights, arguments, and remedies it has under the law with respect to the rates, terms, and conditions in the agreements.

We trust this information adequately addresses CompSouth's concerns relating to service disruption and demonstrates that expedited action by this Commission is completely unnecessary. Thank you for your assistance in this matter.

Very truly yours,

Cheryl R Winn

for Dorothy J. Chambers

Attachment

cc: C. Kent Hatfield, Esq.

541195

BELLSOUTH

BellSouth Interconnection Services
675 West Peachtree Street
Atlanta, Georgia 30375

Carrier Notification
SN91084106

Date: May 24, 2004

To: Facility-Based Competitive Local Exchange Carriers (CLEC)

Subject: Facility-Based CLECs – (Business/Operations Process) - Provision of Service to CLECs Post-Vacatur

The District of Columbia Circuit Court of Appeals' March 2, 2004, Opinion vacating certain Federal Communications Commission (FCC) Unbundled Network Element (UNE) rules is scheduled to become effective on June 16, 2004. This letter is to affirm that BellSouth will not unilaterally breach its interconnection agreements. Upon vacatur of the rules, BellSouth does intend to pursue modification, reformation or amendment of existing Interconnection Agreements (with the exception of new commercial and transition agreements) to properly reflect the Court's mandate. Rumors have been circulating that, upon vacatur, services that BellSouth now provides to CLECs under their Interconnection Agreements will be disconnected. Contrary to such rumors, if the rules are vacated, BellSouth will not, as a result of the vacatur, unilaterally disconnect services being provided to any CLEC under the CLEC's Interconnection Agreement.

If you have any questions, please contact your BellSouth contract manager.

Sincerely,

ORIGINAL SIGNED BY KRISTEN ROWE FOR JERRY HENDRIX

Jerry Hendrix – Assistant Vice President
BellSouth Interconnection Services

ATTACHMENT D

WSJ Opinion: Telecom Has-Beens and The Information Cowpath

By HOLMAN W. JENKINS, JR.

Telecom Has-Beens and The Information Cowpath
June 9, 2004; Page A13

Nothing puts a spring in a lobbyist's step like a close election. Politicians facing the hangman's noose are assumed to be unusually amenable to persuasion. How much more so for lobbyists facing the hangman's noose themselves, clinging to a cashflow opportunity that exists only by government policy and can be taken away by government policy?

Such is the case with AT&T, a company not to be confused with the respected Ma Bell of old. But then if you are one of a million telephone owners around the country that earlier this year received bills from AT&T for services you never ordered or received, you don't need to be told that AT&T has become, ahem, a different company.

In state after state, regulators were moved to action by the same story: First came a bill from AT&T out of the blue, and when the recipients called to complain, AT&T gave them a sales pitch for its long-distance service, thus getting around restrictions on cold-calling phone customers. AT&T shrugged and didn't even make a pretense of defending its actions, beyond asserting a claim that the strategy wasn't deliberate.

George Bush knows the feeling. The White House has now been slammed by AT&T in the form of threats to run TV ads (reportedly already taped) blaming the administration for the prospect (dubious) of higher phone bills unless the administration sends its lawyers into court to prop up a faltering and defective regulatory agenda that happens to benefit AT&T.

At the Justice Department, Solicitor General Ted Olson is the fellow who has the telecom world holding its breathing, waiting to hear whether his office will appeal a federal court ruling suspending a misguided mandate that allows AT&T to buy service from the Baby Bells at an artificially reduced price. AT&T then marks it up and resells it to AT&T's own customers. Don't be misled by news reports suggesting that this is a battle over the "future" of the telecom business. This is a battle over the past, a scrum over which companies will benefit most from extracting the last driblets of cash from the old, non-Internet-based phone network of Alexander Graham Bell.

In all this, AT&T is an artificial creature of the regulatory hothouse twice over. Its original long-distance business was an artifact of regulation, which divided the long-distance phone call into three pieces: two ends and middle (where Ma made her money). Now that technology has rendered that division null and nonsensical, AT&T has availed itself of another regulatory gimme to resell the ends at subsidized rates so it can keep milking its legacy business in the middle a while longer.

Regulators call this a stimulus to local competition, but it's really just a rent-shifting strategy that forces some local Bell customers to subsidize others to receive relabeled service from AT&T. Dave Dorman, head of AT&T, makes sure Wall Street is under no illusion here: He constantly reminds the Street that AT&T is managing the decline of its long-distance business with "cash maximization" in mind and will only use resale of the local loop to cling to customers if the local loop is handed to him at a steep enough discount.

The insanity here can hardly be exaggerated. Invariably resellers aim for the highest value customers, leaving lower value customers to subsidize the pillaging of the system. More bizarre still, state regulators have become the loudest champions of this pillaging.

Had Justice had its thinking cap on, it would have greeted the court ruling in March as the final word on telecom regulation. But, nope. The administration has been loath to take sides between two large sectors of the telecom business, each of which spends zillions on lobbying and campaign contributions. Verizon, one of the Bells in favor of letting the rules lapse, employs notable GOPer Bill Barr, a former attorney general, as its general counsel. AT&T employs Jim Cicconi, a former White House official and prominent Republican fundraiser, as its general counsel.

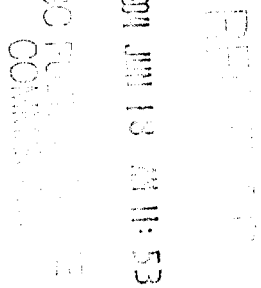
Faced with this regulatory Fallujah, the administration has resorted to embarrassed dithering. At the FCC, Republican commissioner Kevin Martin continues to side with two Democrats in trying to preserve AT&T's sinecure. Mr. Martin is a former Bush campaign lawyer who a year ago began muddying up FCC Chairman Michael Powell's clear and rational deregulatory agenda on grounds that, hey, somebody somewhere might get a higher phone bill and blame the Bush administration.

Meanwhile, the rest of the world is surpassing the U.S. in broadband rollout, and tellingly, much of the world relies on DSL, the Baby Bell technology that is increasingly able to deliver the megabit speeds needed for video over the old copper wires that the phone company began unspooling into your dwelling a century ago. As BellSouth keeps pointing out, these newly capable DSL technologies can deliver all the services consumers might want at a fraction of fiber's cost. Yet Washington holds a lid down on DSL with parasitic regulation while indulging in fanciful hopes that the Bells will spend thousands of dollars per home to roll out fiber-optic lines instead.

Worse, energy spent on the reselling rules is energy not spent on protecting Internet telephony from an impending regulatory grab by state public utility commissions. The waste here is tremendous. As matters now stand, wireless and cable will fight out the future as the Bells' copper technology, which has more potential than anyone might have guessed a few years ago, lies fallow. The Bush administration could end the paralysis today by saying not only will it not seek to overturn the court order but will file briefs to the Supreme Court in favor of letting it stand. Too bad the administration has allowed itself to be scared silly by a Ma Bell that isn't scary to anyone else anymore.

STATE OF SOUTH CAROLINA)
) CERTIFICATE OF SERVICE
COUNTY OF RICHLAND)

The undersigned, Nyla M. Laney, hereby certifies that she is employed by the Legal Department for BellSouth Telecommunications, Inc. ("BellSouth") and that she has caused BellSouth Telecommunications, Inc.'s Update to BellSouth Telecommunications, Inc.'s Response in Opposition to the Petition of CompSouth for Emergency Declaratory Ruling in Docket Nos. 2003-326-C and 2003-327-C to be served upon the following this June 18, 2004:



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(Electronic Mail and US Mail)

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(MCI WorldCom Communications, Inc.)
(Intermedia Communications, Inc.)
(MCImetro Access Transmission Services, LLC)
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